

AMENDED IN SENATE MARCH 6, 2002
AMENDED IN ASSEMBLY APRIL 30, 2001
AMENDED IN ASSEMBLY APRIL 16, 2001
AMENDED IN ASSEMBLY MARCH 15, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 164

Introduced by Assembly Member Harman

January 31, 2001

An act to ~~amend Section 56500.3 of~~ *add Section 56500.4 to the* Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 164, as amended, Harman. Special education: ~~due process hearings~~ *alternative dispute resolution*.

Existing law provides procedural safeguards, including due process hearings for the resolution of complaints regarding alleged violations of the Individuals with Disabilities Act. Existing law also authorizes parties to special education disputes to seek resolution through mediation prior to filing a request for a due process hearing.

This bill would ~~authorize the local education agency to establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, for the purpose of encouraging the use and explaining the benefits of the mediation process to the parents, as specified~~ *require the State Department of Education to establish and administer a statewide program of grant funding, with specified components, to support*

special education local plan areas (SELPA) in conducting alternative dispute resolution programs for resolving special education disputes. The bill would state the intent of the Legislature to make \$300,000 available for purposes of the program, on an annual basis, would prescribe the allocation of funds under the program, and would require grant recipients to perform specified services related to alternative dispute resolution. The bill would prescribe other matters related to the grant program.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. — Section 56500.3 of the Education Code is~~
2 *SECTION 1. (a) The Legislature finds and declares as*
3 *follows:*
4 *(1) The Individuals with Disabilities Education Act (20 U.S.C.*
5 *Sec 1400 et seq.) encourages the use of mediation to resolve*
6 *disputes between parents of children with disabilities and local*
7 *education agencies.*
8 *(2) The only statewide mediation process available to parents*
9 *and local education agencies is a prehearing mediation*
10 *conference filed with the state or a mediation conference*
11 *scheduled after a request for a due process hearing has been filed*
12 *with the state.*
13 *(3) The number of requests for special education due process*
14 *hearings and complaints filed by parents of children with*
15 *disabilities against local education agencies have increased*
16 *significantly in recent years.*
17 *(4) The costs of litigation, state level mediation, and*
18 *investigation of complaints have likewise increased significantly*
19 *in recent years.*
20 *(5) The current system of dispute resolution often results in*
21 *adversarial relationships between parents and local education*
22 *agencies, thereby affecting the provision of an appropriate*
23 *education to children with disabilities.*
24 *(6) A limited number of special education local plan areas*
25 *(SELPA) have implemented an alternative dispute resolution*
26 *process that has successfully resolved disputes at the local level,*

1 *thereby reducing the amount and cost of litigation and complaint*
2 *investigation at the state level.*

3 *(7) Parents of children with disabilities are entitled to other*
4 *options for dispute resolution that develop lasting relationships*
5 *and build trust.*

6 *(8) Through an alternative dispute resolution program,*
7 *children with disabilities may be provided appropriate services.*

8 *(b) It is, therefore, the intent of the Legislature to do the*
9 *following:*

10 *(1) New options to do the following for alternative dispute*
11 *resolution at the local level be created through coordination by the*
12 *SELPA system or collaboration of multiple SELPAs.*

13 *(2) These new options not interfere with a parent's right to*
14 *pursue other options at the state level, but work in conjunction with*
15 *these options to provide a greater variety of options to the parent.*

16 *(3) A program be established with funding to support the*
17 *development and implementation of alternative dispute resolution*
18 *in each SELPA throughout the state.*

19 *SEC. 2. Section 56500.4 is added to the Education Code, to*
20 *read:*

21 *56500.4. (a) The State Department of Education shall*
22 *establish and administer a statewide program of grant funding to*
23 *establish alternative dispute resolution programs for special*
24 *education that includes the following:*

25 *(1) An advisory board that includes representatives from local*
26 *alternative dispute resolution projects to ensure ongoing*
27 *communication.*

28 *(2) An annual planning conference for new implementers of*
29 *alternative dispute resolution programs.*

30 *(3) An annual statewide conference for all implementers of*
31 *alternative dispute resolution programs.*

32 *(4) Criteria for awarding grants, funding, data collections, and*
33 *evaluating alternative dispute resolution projects.*

34 *(5) The selection of recipients and allocation of funding.*

35 *(6) The selection of individuals to serve as mentors to support*
36 *implementers.*

37 *(b) It is the intent of the Legislature that the State Department*
38 *of Education shall be funded at three hundred thousand dollars*
39 *(\$300,000) annually, as adjusted annually by the cost of living, to*
40 *carry out its responsibilities under subdivision (a).*

1 (c) Subject to the availability of funding for this purpose,
2 funding for grant recipients shall be at the following levels:

3 (1) SELPAs and multi-SELPA applicants selected by the State
4 Department of Education shall receive fifty thousand dollars
5 (\$50,000) annually, as adjusted annually by the cost of living, for
6 a period not to exceed three years for initial implementation
7 purposes.

8 (2) SELPAs and multi-SELPA applicants that continue to
9 implement alternative dispute resolution programs after the initial
10 three years shall receive ongoing funding at ____ dollars (\$____)
11 annually plus ____ dollars (\$____) per average daily attendance,
12 as adjusted annually by the cost of living and as recommended by
13 the State Department of Education for ongoing program
14 maintenance.

15 (d) SELPAs and multi-SELPA collaboratives receiving funding
16 under this section shall provide the following services.

17 (1) Intake coordination and parent outreach.

18 (2) Prevention activities.

19 (3) Formal dispute resolution activities.

20 (4) Training of parents and local education agency staff.

21 (5) Data collection.

22 (6) Narrative reports of alternative dispute resolution training
23 and other activities.

24 (7) Expenditure reports.

25 (8) Evaluation activities.

26 (9) Participation in annual planning and implementation
27 conferences.

28 (e) The State Department of Education shall administer a
29 mentorship program that identifies individuals whose
30 responsibility is to provide support to implementers. These
31 individuals shall be responsible for the following activities:

32 (1) Participation on the alternative dispute resolution advisory
33 board.

34 (2) Participation in the planning and implementation of
35 quarterly meetings with assigned implementers.

36 (3) Participation in the planning and implementation of the
37 annual statewide alternative dispute resolution conference.

38 (4) Participation in the planning and implementation of the
39 annual alternative dispute resolution planning conference.

1 (5) *A quarterly report of activities to the State Department of*
2 *Education.*

3 (6) *Consultation, training, and other technical assistance to*
4 *support the State Department of Education and SELPAs to*
5 *implement the provisions of this chapter.*

6 (7) *Contracting with individuals to mentor planning and*
7 *implementing.*

8 amended to read:

9 56500.3.— (a) ~~It is the intent of the Legislature that parties to~~
10 ~~special education disputes be encouraged to seek resolution~~
11 ~~through mediation prior to filing a request for a due process~~
12 ~~hearing. It is also the intent of the Legislature that these voluntary~~
13 ~~prehearing request mediation conferences be an informal process~~
14 ~~conducted in a nonadversarial atmosphere to resolve issues~~
15 ~~relating to the identification, assessment, or educational placement~~
16 ~~of the child, or the provision of a free, appropriate public education~~
17 ~~to the child, to the satisfaction of both parties. Therefore, attorneys~~
18 ~~or other independent contractors used to provide legal advocacy~~
19 ~~services shall not attend or otherwise participate in the prehearing~~
20 ~~request mediation conferences.~~

21 (b) ~~Nothing in this part shall preclude the parent or the public~~
22 ~~education agency from being accompanied and advised by~~
23 ~~nonattorney representatives in the mediation conferences and~~
24 ~~consulting with an attorney prior to or following a mediation~~
25 ~~conference. For purposes of this section, “attorney” means an~~
26 ~~active, practicing member of the State Bar of California or another~~
27 ~~independent contractor used to provide legal advocacy services;~~
28 ~~but does not mean a parent of the pupil who is also an attorney.~~

29 (c) ~~Requesting or participating in a mediation conference is not~~
30 ~~a prerequisite to requesting a due process hearing.~~

31 (d) ~~The local education agency may, pursuant to subparagraph~~
32 ~~(B) of paragraph (2) of subsection (e) of Section 1415 of Title 20~~
33 ~~of the United States Code, establish procedures to require parents~~
34 ~~who choose not to use the mediation process to meet, at a time and~~
35 ~~location convenient to the parents, for the purpose of encouraging~~
36 ~~the use and explaining the benefits of the mediation process to the~~
37 ~~parents. The local education agency may not deny or delay a~~
38 ~~parent’s right to a due process hearing under Section 56501 if the~~
39 ~~parent fails to participate in the meeting described in this~~
40 ~~subdivision. A meeting pursuant to this subdivision shall be with~~

~~1 a disinterested party who is under contract with either of the
2 following:~~

~~3 (1) A parent training and information center or community
4 parent resource center established pursuant to Section 1482 or
5 1483 of Title 20 of the United States Code.~~

~~6 (2) An appropriate alternative dispute resolution entity.~~

~~7 (c) All requests for a mediation conference shall be filed with
8 the superintendent. The party initiating a mediation conference by
9 filing a written request with the superintendent shall provide the
10 other party to the mediation with a copy of the request at the same
11 time the request is filed with the superintendent. The mediation
12 conference shall be conducted by a person knowledgeable in the
13 process of reconciling differences in a nonadversarial manner and
14 under contract with the department pursuant to Section 56504.5.
15 The mediator shall be knowledgeable in the laws and regulations
16 governing special education.~~

~~17 (f) The prehearing mediation conference shall be scheduled
18 within 15 days of receipt by the superintendent of the request for
19 mediation. The mediation conference shall be completed within
20 30 days after receipt of the request for mediation unless both
21 parties to the prehearing mediation conference agree to extend the
22 time for completing the mediation.~~

~~23 (g) Based upon the mediation conference, the district
24 superintendent, the county superintendent, or the director of the
25 public education agency, or his or her designee, may resolve the
26 issue or issues. However, this resolution shall not conflict with
27 state or federal law and shall be to the satisfaction of both parties.
28 A copy of the written resolution shall be mailed to each party
29 within 10 days following the mediation conference.~~

~~30 (h) If the mediation conference fails to resolve the issues to the
31 satisfaction of all parties, the party who requested the mediation
32 conference has the option of filing for a state-level hearing
33 pursuant to Section 56505. The mediator may assist the parties in
34 specifying any unresolved issues to be included in the hearing
35 request.~~

~~36 (i) Any mediation conference held pursuant to this section shall
37 be held at a time and place reasonably convenient to the parent and
38 pupil.~~

~~39 (j) The mediation conference shall be conducted in accordance
40 with regulations adopted by the board.~~

1 ~~(k) Notwithstanding any procedure set forth in this chapter, a~~
2 ~~public education agency and a parent may, if the party initiating the~~
3 ~~mediation conference so chooses, meet informally to resolve any~~
4 ~~issue or issues to the satisfaction of both parties prior to the~~
5 ~~mediation conference.~~

6 ~~(l) The procedures and rights contained in this section shall be~~
7 ~~included in the notice of parent rights attached to the pupil's~~
8 ~~assessment plan pursuant to Section 56321.~~

